

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MICHAEL J. BROWN, AIS 186027, :

Petitioner, :

vs. : **CA 04-0818-BH-C**

JERRY FARRELL, :

Respondent. :

ORDER

This action is before the Court on a complaint for habeas corpus relief filed by Michael J. Brown, AIS 186027, pursuant to 28 U.S.C. § 2254. After a review of the complaint (Doc. 1), and the answer filed by respondent, Jerry Farrell, on February 25, 2005 (Doc. 8), it is determined that petitioner should be given an opportunity to respond to the statute-of-limitations defense asserted by the respondent.

Respondent argues that Brown failed to file his federal habeas petition within one year of the date upon which the judgment of conviction became final, contrary to the requirements of 28 U.S.C. § 244(d)(1)(A). Respondent calculates that the one-year period ended October 18, 2001, one year and forty-two days after his conviction and sentence on November 6, 2000, since no direct appeal was taken. It is further argued that this period was not tolled by a post-conviction motion since petitioner did not file his Rule 32 petition until February 18, 2004. Thus, it is respondent's argument that this habeas complaint

is untimely filed and therefore barred by 28 U.S.C. § 2244(d)(1)(A).

After a review of this issue, it does appear to the undersigned that the respondent's position is correct. Accordingly, petitioner shall **SHOW CAUSE** not later than **May 31, 2005**, as to why this cause of action should not be dismissed based on the plaintiff's failure to comply with 28 U.S.C. § 2244(d)(1)(A). Should the petitioner fail to respond to this Order within the authorized time period, an inference will be drawn from his failure to respond that he has no rebuttal to the statute-of-limitations defense.

DONE AND ORDERED this 28th day of April, 2005.

s/WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE